INTRODUCTION

Above all, this paper is based on the thesis that economic activity in contemporary societies is dominated by organizations, which have legal personalities in the forms of corporations, companies and so forth. In nearly all commercial transactions, at least one party is a company organized as a specific legal entity such as a corporation, partnership, limited liability company, etc. Yet, our initial thesis is that the Roman economy was strikingly different from the legal-organizational aspect of conducting business activities. Within its historical development, ancient Rome saw the rise of both sophistically developed legal institutions and an energetic, and specific in its nature, economic system. With very few exceptions, however, Roman commerce managed to develop quite well without the benefit of entities that were legally distinct from their human owners. The trait of personality was intertwined with the personality of the individual, not capital, as it is in contemporary conditions. While Romans were familiar with all the legal and economic aspects of legal entities, they astonish from the standpoint of generally failing to take the developmental step of assembling the types of organizations that dominate economies today from the aspect of legal personalities (corporations/companies). For example, we know of no Roman joint-stock company.

Although, in this sense, we must keep in mind what Andreas Fleckner points out when studying this issue. Namely, he argues that the mere lack of evidence, of course, does not suffice to infer that such institutions (larger capital commercial entities, such as a shareholder company) did not exist in Ancient Rome, because the evidence for larger capital associations might be buried in the countless sources that have been destroyed. Or, to put it differently, as Fleckner notes "absence of evidence is not evidence of absence."

In our paper we examine the structure of the various legal forms through which the Romans conducted business, emphasizing their rationale as well as the economic consequences that arise from these processes. The issues/dilemma that is of quintessence in our analysis is why did the ancient Romans not develop the law of commercial entities that we might expect given the level of development that their legal system had reached as well as the complexity of their commercial relations? As Hansman and Kraakman note in their research: for large projects of special types the Romans seem to have created a hybrid weak/strong (or "semi-strong") entity with the attributes of a modern tradable limited partnership. And then, instead of taking the next

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RELATIONS BETWEEN THE INSTITUTES OF ROMAN LAW AND CONTEMPORARY BUSINESS LAW WITH REFERENCE TO MACEDONIAN LEGISLATION

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Abstract: The issue of how capital-intensive activity was financed in Rome has been studied and debated by a vast number of scholars of law, economy, history and even sociology. What can be ascertained is that the institutes of Roman law provide a firm basis for the development of contemporary business law. Institutes such as Societas (Publicanorum, Aregntarii), Consortium, Collegia, and even Peculium were just some of the examples of how business activity was essential to the Roman legal and societal system. The aim of this paper will be to analyze such institutes, and put them in context with contemporary business legislation, with a specific focus on the legislation in this field in the Republic of Macedonia. Looking through the examples of Roman law, the authors will provide guidelines for future trends in Macedonian business law legislation.

Keywords: Legal Institutes, Business Law, Societas, Consortium, Collegia;

– seemingly modest – step and developing strong commercial entities such as the business corporation, the Romans went the other direction and abandoned the form.

What must be pointed out is that objective of this paper is not to bring to light previously unknown facts about business in ancient Rome or the legal environment that encompassed and lead it. More often than not, within the content of the paper, examples are taken from Roman legal institutes to see how their accomplishments and faults can be adapted and/or implemented within a contemporary legal system.

In the end of our paper, we consider the conclusions that we bring forward, we also put into context Roman examples, and how they shape contemporary business law, here especially considering *Societas* and the reasons for its (in)applicability in modern business trends.

COMMERCIAL-LEGAL INSTITUTES OF ROMAN LAW (GENERAL ASPECTS)

We can undoubtedly ascertain that numerous legal institutes of Roman law are of vital essence for analyzing the effects of Roman law, especially on contemporary commercial-legal activities and institutes. Here, we are of course referring to: Consortium (*Erctum non citum*), Societas (*Publicanorum, Aregntarii*), Collegia, Communio Incidens, Peculium, Nautae, Caupones, Stabularii, Mandatum, Locatio Conductio, Precarium, and Mutuum.

Yet, we must first cover the historical-theoretical dimension of this process to arrive at specific conclusions. Although, it is also necessary to point out that for a concrete and detailed analysis the contents of a scientific paper is not wide enough to elaborate. As so, this paper will draw general analysis, while also putting a specific emphasis on *Societas*.

The issue of the methods as to how Romans financed capital intensive activities especially those related to building and specific forms of commercial activities is an issue that has been analyzed and often debated by Romanists and classicists. At the same time, though, this issue also has an effect on contemporary scholars of law (Roman law in specific, although not exclusively) as a result of the fact that the principles and methods of functioning of the basic institutes connected to legal entities and their statutory aspect in roman law can provide ideas for the development of contemporary corporatism, especially when analyzed through the prism of economic,

social, political, as well as, above all, legal conditions, circumstances and state of affairs in that time.

For over 200 years historians, economists and lawyers have speculated that during the Roman Republic, businessman created huge firms (what we consider in our historical development to be companies/corporations) with publically traded stocks, or something that can be similarly characterized as a contemporary joint-stock company[1]. According to **Hirst**, such statements and views are without adequate fundament. Namely, his detailed research in this field, is based on numerous Latin as well as classic Greek sources including the work of Polibus, Cicero, Livi, Plutarch as well as the New Testament and Digesta. Hirst argues that none of the sources which his research is privy to uncovers concrete proof of the existence of forms of companies based on capital and/or the existence of tradable stocks – nothing comparable to what we have in contemporary circumstances. One of the basic premises of Hirst's research is that the inexistence of evidence does not mean that such a legal form (legal institute) did not exist, and there is the possibility that various undiscovered sources could provide evidence for such cases. As so, he puts his focus on researching the structural occurrences which supported capital firms within the context of basic legal, economic, social as well as political circumstance. All of this leads Hirst to the conclusion that there is a small likelihood that any large form of a capital-based company existed, especially considering that there is evidence of the existences of "smaller" forms of trade entities. Here, we are specifically referring to: *Societas, Societas publicanorum u Peculium*. Still, these institutes represent a basis for the development of legal entities whose legal-physiognomic characteristics represent a legal postulate for contemporary commercial companies. Taking into consideration the research by Hirst – Hansmen, Krakman and Squire go to the length that, apart from the legal forms already established (above), they additionally analyze the family (*Familias*) as a quasi-form of a trady company. Their research points out that in roman law the family was the most basic form of legal person (legal entity). In that sense, they highlight that the family represented an atom without through which larger (wider) legal arrangements could be constituted[2].

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1 KRAAKMAN, R., HANSMAAN, H. and SQUIRE, R. Incomplete Organizations: Legal Entities and Asset Partitioning in Roman Commerce. European Corporate Governance Network Working Paper. 2014, p. 4.

2 KRAAKMAN, R., HANSMAAN, H. and SQUIRE, R. Op. cit., p. 5.

From the perspective of the development forms of commercial companies that we he have within our legal systems today, which step by step began to arise from a statutorial aspect somewhere in the 17th century as the forms which we know and use in legal application today, we can conclude that Roman commercial companies (a term which we are hesitant to use, but do so) were quite paradoxical[3]. As Kraakman notes, the Romans persistently relied on the patriarchal family as an essential commercial (trade) entity. He argues that the Roman family was[4] "embedded deeply in formal law, and elaborated on by providing for multiple, subsidiary slave-managed peculium businesses that were apparently endowed with an idiosyncratic anti-entity type of asset partitioning. In contrast to this complex legal structure for the family, the Romans did not take the seemingly straightforward step of providing for a general partnership, or any other weak entity that could be used in creating a business entity outside the family. Yet for large projects of special types the Romans seem to have created a hybrid weak/strong (or "semi-strong") entity with the attributes of a modern tradable limited partnership. And then, instead of taking the next – seemingly modest – step and developing strong commercial entities such as the business corporation, the Romans went the other direction and abandoned the form."

Considering the limited amount of legal sources with which contemporary Romanists are left with, it is at times difficult to ascertain as to why Romans, after the fall of the Republic were not able to develop a stronger form of commercial legal entity, and in this sense as to why *societas publicanorm* was entirely abandoned. An obtainable hypothetical possibility is that after the fall of the Republic much of the commercial activities which were conducted by the state and supported the existence of this form were once again taken over by the Empire. What we can consider, especially as reiterated many times in this paper, is that taking into account the sources accessible to us, the Roman legal system as well as Roman commerce and economy in the Republic, during its final years, had developed within the complex capability for the formation of a commercial legal entity that would have had the characteristics of the first commercial trade companies that arose around the 17th century. In that context, if Rome had continued its developmental tract as an open society, its economic and commercial forces would have brought forward this type of commercial-

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3 KRAAKMAN, R., HANSMAAN, H. and SQUIRE, R. Op. cit., p. 22.

4 Ibidem.

legal framework – a commercial-legal framework which would have been a logical and necessary trajectory. In this sense, as numerous legal theorists point out, social and political circumstances blocked this developmental process, and prevented a development which would have departed from having the *familias* as the basic form of legal entity. If the Roman legal system had been able to overcome this roadblock it could have moved forward in a path of naturally developing legal institutions with characteristics aimed at enhancing trade and free entrepreneurship.

Research into the substantial development of legal entities from Roman law to the global corporations that exist today is a necessity in theoretical work, so that the lessons from the effects of societal state of affairs (economic, political, social and so forth) on statutory law can be erudited. Contemporary entrepreneurship prefers a statutory division of ownership from the legal entity (capital companies), while Roman law primary put an emphasis on personification with the commercial undertaking (personal companies), with certain exemptions, as noted, existing.

Corporations today are more than a commercial undertaking. Unlike the first companies in Rome which were time and/or venture limited, in today's contemporary circumstances it is quite difficult to imagine a company falling apart after one (or a few) commercial activities, or after a certain period of time. Quite to the contrary, contemporary corporatism has created circumstances where the legal attributes of companies make them employers of millions and an essential building block for capitalism as we know it, and it that sense our social and political systems as well. Still, it is necessary to analyze Roman commercial trade entities, as they provide a basic guideline, as well as trajectorial development necessary to look towards where corporatism (its legal nature, of course) could develop going forward.

SOCIETAS – HISTORICAL AND CONTEMPORARY ASPECTS

It is of crucial importance to analyze the basic preconditions around which *societas* was developed within Roman law. As with all legal institutes from this long period of legal history studied by various scholars, through its detailed analysis it is notable to point out that this specific institute had various developmental structures within the context of specific societal preconditions. To this day, many Romanists cannot find a set agreement as to the aspects and character of the relationship

(connectivity) between the consortium and the specific forms (later forms) of *societas*, yet most of the analysis is pointed towards the *societas omnium bonorum*, pointing out that this type of *societas* is of quintessence for its further development in various forms.[5]

It is very likely that the modified consortium kept the economically acceptable model of joint endeavors, with an existent tendency to loosen the tight family bond. Common life remained an important characteristic of this partnership (community), but only as e relapse from the consortium, which showed itself as a relief in joint endeavors. As so, common life was in second plan, while the focus was point on joint endeavors and the realization of profit[6]. Stemming from such dominant elements within this specific phase of their developmental process these legal communities were referred to as *societas omnium bonorum*, or translated "communities of all goods". Within this context, there are legal theorists that make an excellent and logical point: the members of this exact form of *societas* for all intents and purposes had no choice as to whether or night they could contractually bind themselves, but rather moved from the consortium into a new form of legally binding community (legal relationship) where they inherited the family inheritance and continuing the practice of the consortium[7]. *Societas omnimum bonorum* in actual fact represents a particular type of community as a form of consensual contract, and arose not only through, as mentioned, the transformative process of the consortium, but also with the agreement for joint contribution of everything the co-agreers had, with the aim of living and working together[8].

With the timely and irrefutable development of the roman economy, new forms of *societas* arose – forms which had the primary aim of supporting joint entrepreneurial endeavors. As a result there is a generally accepted stance of the existence of two groups of communities for joint endeavors, which are primarily differentiated in relation to the aim of the community as well as the ways by which it is established (in

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5 POLOJAC, M. Societas i consortium: poreklo klasičnog ortakluka. – In: *Anali Pravnog fakulteta u Beogradu*, 1992, p. 607.

6 See more NAUMOVSKI, G. Vlijanieto na rimskiot societa vrz sovremeniot dogovor za ortaklak (dogovor za zaednica). Skopje, Faculty of Law "Iustinianus Primus", University of Ss. Cyril and Methodius, 2003.

7 CUQ, E. Manuel des institutions juridiques des Romains. 1917, p. 494.

8 PUHAN, I. and POLENAK-AKIMOVSKA, M. Rimsko Pravo. Skopje, Faculty of Law "Iustinianus Primus", University of Ss. Cyril and Methodius, 1991, g. 273.

contemporary legal terms – incorporated). The first group encompasses *societas quaestus, societas unius rei i societas negotiationis (societas alicuius negotiationis)*, which are considered as *societas* established for joint ventures[9]. Romanists also refer to the existence of a second group, where there are two communities for joint endeavors *societas negotiationis i societas unius rei.*[10] The Institutes of Gauis establish this division,[11] as well as Ulpian's definition of the classic *societas* given within the Digestite.[12]

The reasons for the various different communities (partnerships) for joint endevaours arise from the intensive commercial development, and analyzing the specific aspects of these various forms, especially considering social and economic aspects (here, referring to the aims of these communities) represents a fundamental precondition for the further research of these entities, the length as well as ending of their contractual communities.

There were different types of *societas (alicuius) negotiationis*, depending on the activities of the *societas* itself. Here, we are referring to *societas publicianorum, societas argentarium, societas venaliciariorum*. Unlike *societas venaliciariorum*, which was established for wide-ranging slave-trade[13], the other two types were of vital importance to the roman economic and societal system, because of the specific activities foreseen.

One of the closest legal entities that resembles contemporary companies is the *societas publicianorum*, which were entities that were granted the right to carry out state contracts – in e sense a type of contemporary concession. These were cases were the state allowed private individuals to carry out public activities (Public private partnerships are comparable in contemporary circumstances), so that they could be efficiently conducted. In his research, Baron gives a comprehensive legal-organizational breakdown of *the societas publicanorum*[14]. Apart from the existence of the *manceps* (undertaking of the works), the *societas incorporates socii*, on whose

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9 PUHAN, I. and POLENAK-AKIMOVSKA, M. Op. cit., p. 274.

10 STANOJEVIK, O. Rimsko pravo. Dosije, 2010, p. 274.

11 GAI. 3, 148: societatem coire solemus aut totorum bonorum aut unius alicuius negotii, veluti mancipiorum emendorum aut vendendorum.

12 D. 17.2.5.0, ULP. 31 ad ed. societates contrahuntur sive universorum bonorum sive negotiationis alicuius sive vectigalis sive etiam rei unius.

13 ROMAC, A. Rimsko Pravo. Zagreb, 1981, p. 320.

14 Ibidem.

name "*partes*" are published, which are the financial participation in the economic capital of the *societas*[15]. "*Partes*" se res in *commercio*, are listed on the commercial market. As such, we can come to an initial conclusion that this *societas* (entity, it can be referred to as so) comes extremely close to the contemporary corporation (joint-stock company). Although, as previously noted in the paper, roman legislation never took a final step towards creating specifics that precisely resemble contemporary corporations. In this sense though, it is crucial to point out that the *societas publicianorum* is proof of a developed modus of concessions at a time where the progress of the state had reached a pinnacle which required such institutes.

Referring to the *societas publicianorum* there is always the dilemma as to whether or not they were legal entities. There is an agreement that they were[16], as a result of the fact that they differentiated themselves from the other forms of *societas* which were consensual contracts. Of course, roman legal practice also created other formers of *societas*, which were forms in between the consensual *societas* and *societas publicianorum*, yet none were developed to a phase as close as the *publicianorum*, to be referred to in this sense.

The application of the partnership contract, which stems and is, in a general sense fundamentally unchanged from the *societas*, is quite applicable in contemporary national and international legislation, especially considering the characteristics of the contemporary partnership contract and its position within civil law, as well as its proximity to the contemporary institutes of commercial law. With a continually intertwined and globalized economic system, the usage of the partnership in conditions of a higher level of economic integration and free-trade becomes ever more required. The specific characteristics of this contractual form which is based on a high level of personal trust between the partners, which is of importance in comparison to the inter-state limitations and the bureaucratic character of institutions which slows the trade of goods and services.

Considering the widespread use of ICT and the various, both positive and negative, repercussions brought by it within commercial relations, the partnership could represent an ideal tool for economic undertakings of larger dimensions which would especially be accented in the realization of certain one-time financial endeavors,

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15 Ibidem.

16 Ibidem.

something similar to the *societas unius rei*, but also considering specific long-term commercial activities which would transcend national boarders – a *societas quaestus*.

The role of the partnership in Macedonian legislation is especially important, as there is a need to implement measures for the affirmation of the partnership as a legal institute, as well as the stimulation of its signing, here with specific reference to the public trade company, which is specifically regulated in the Macedonian Company Law (Law on trade companies).